

22-APPEAL-0011

114 East Whitney Avenue



**Louisville Metro Board of Zoning Adjustment
Public Hearing**

Chris French, Planning & Design Supervisor

December 5, 2022

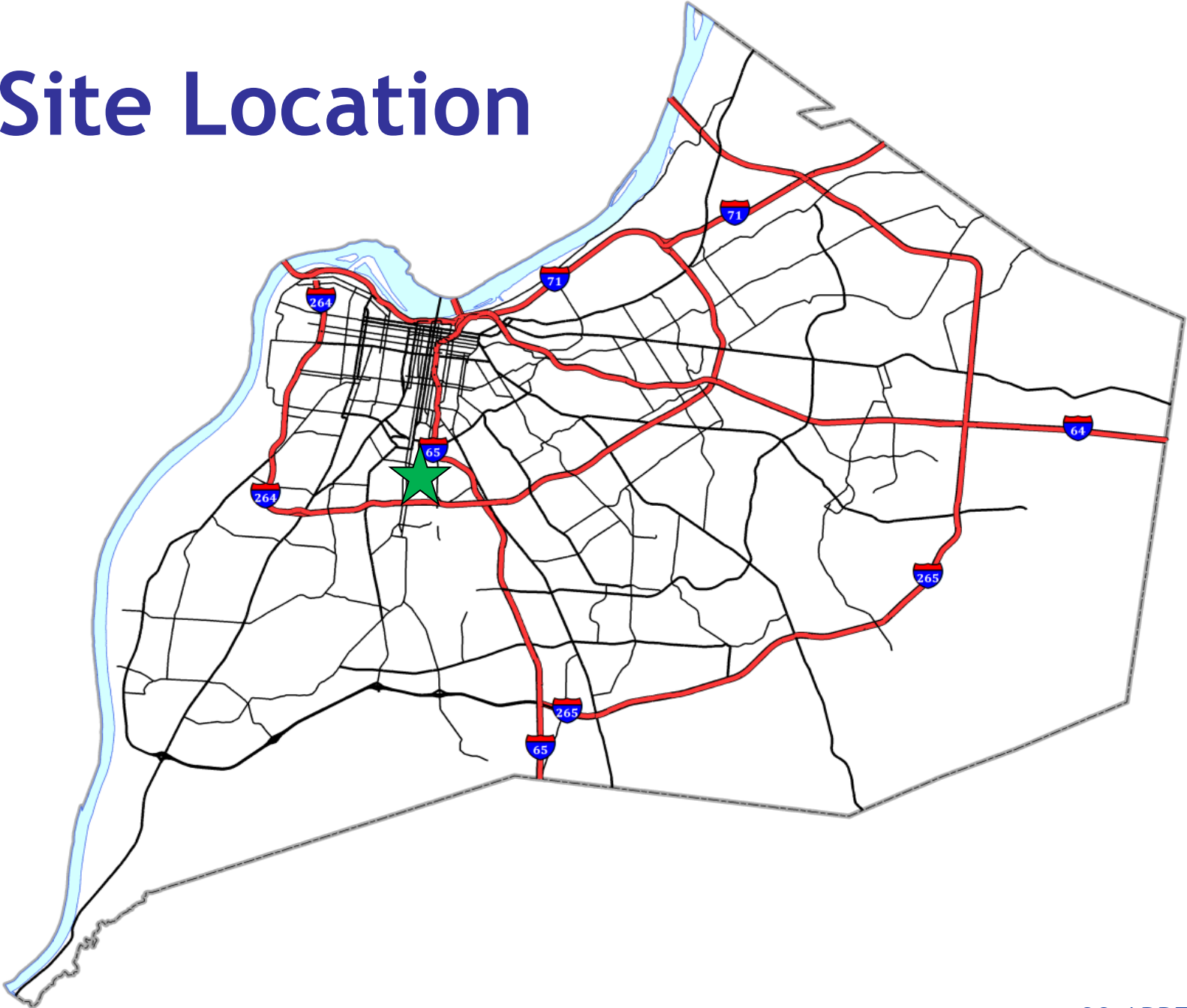
Request(s)

- Appeal of an administrative decision regarding enforcement action.

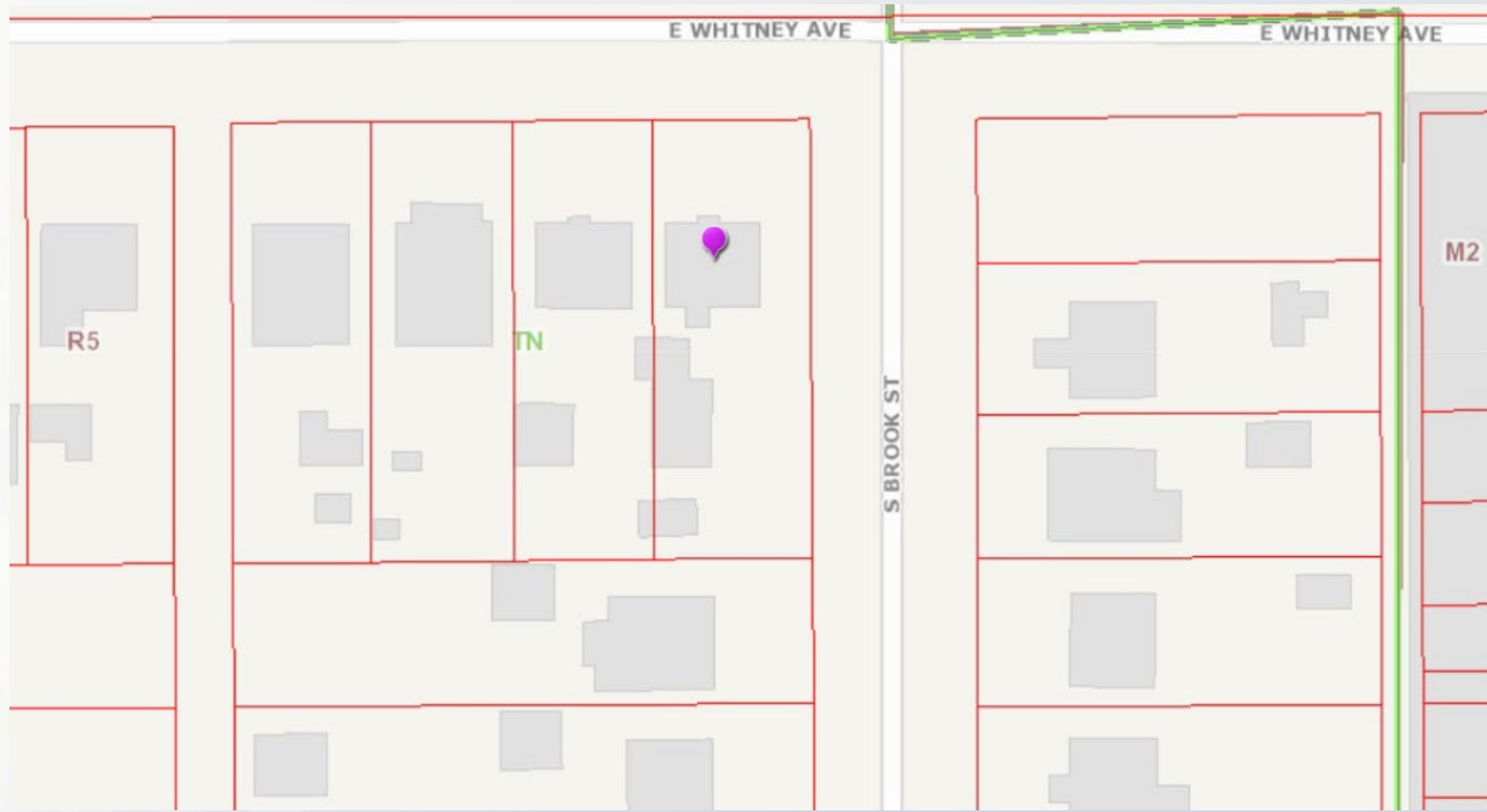
Case Summary/Background

- The property owner was issued a notice of violation by the zoning enforcement officer on August 24, 2022.
- The property owner's representative filed an appeal of the enforcement action on September 23, 2022. This appeal was filed within 30 days of the issuance of the notice of violation; therefore, this is a timely appeal.

Site Location



Zoning/Form Districts



Aerial Photo/Land Use



Enforcement Photos – 8/24/22



Aug 24, 2022 10:40:48 AM



Aug 24, 2022 10:40:30 AM



Aug 24, 2022 10:37:56 AM



2022





4305 S Brook St

Louisville, Kentucky

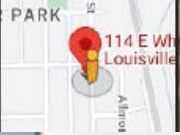
Google

Street View - Sep 2007

Currently shown: Sep 2007

2007

2022



4305 S Brook St
Louisville, Kentucky
Google

Street View - Oct 2011



Currently shown: Oct 2011

2007 2022



Google







4305 S Brook St
Louisville, Kentucky
Google



Basis of Appeal

The Appellant's Basis of Appeal includes three statements in support of overturning the decision:

- Due Process Issue: Had difficulty finding the appeal application.
- Nonconforming Rights: The Appellant states that the use has nonconforming rights.
- Noncompliant Parking: The Appellant argues that the parking of more cars than permitted is a nonconforming use of the property.

Staff Findings

- The appeal does not contest the finding by the office that the existing use (auto repair) is not permitted in the R-5 zoning district and the appeal does not contest that the Traditional Neighborhood Form District restricts parking outside to no more than 3 vehicles
- Due Process Issue: The appeal application was submitted and accepted within the 30-day appeal period. The appeal hearing was scheduled in a timely manner in consultation with the owner's representative.

Staff Findings

- Nonconforming Use: The owner has not filed a nonconforming rights determination for this property. Further, the Appellant did not file a nonconforming use determination application in conjunction with this appeal.
- It does appear that this property was rezoned in 1986 from M-2 to R-5. The M-2 zone would have permitted auto repair. However, the owner's representative has not submitted any evidence to show the use existed in 1986 and that the use continued to the present day.

Staff Findings

- Parking Issue: The owner did not file an application with PDS for a maximum parking waiver to allow more than 3 vehicles parked outside.
- In conclusion, the basis of appeal does not state that there was an error in the application of the LDC by the zoning enforcement officer in his determination that the use (auto repair) and that the use is not permitted in the R-5 zone. Further, the owner did not dispute that the Traditional Neighborhood Form District does not allow more than 3 vehicles to be parked outside.

Required Actions

- Pursuant to LDC 11.7.3 and KRS 100.257, the BOZA shall have the power to hear and decide cases where it is alleged by the applicant that there is error in any order, requirement, decision, grant, or refusal made by an administrative official in the enforcement of the zoning regulation.
- The Board must determine if an error was made regarding the zoning enforcement action that the Appellant was in violation of the zoning code by operating a commercial automobile repair business within a residentially zoned property.